

**FCC FORUM ON THE E-RATE PROGRAM**

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Federal Communications Commission  
Office of the Secretary

**The competitive bid process is critical to ensuring efficient use of E-rate funds**

- All parties must comply with competitive bidding rules
  - RFPs (Form 470) must be for a specific service or product, not for a technology partner
  - Price of services/products in the winning bid must be established before vendor selection
  - Price of services/products must be the primary, but not the sole, factor considered in selection of winning bid
- Pattern of abuse may be grounds for debarment from E-rate participation; lesser violations may warrant lesser punishment
- In reviewing Form 471 applications, SLD should evaluate reasonableness of request using criteria such as applicant's size (*e.g.*, average E-rate expenditure per student) and applicant's award history (*e.g.*, whether applicant has received funds for same type of equipment or wiring, for the same location, in several successive funding years)
- Transfer of equipment by applicants should be limited by prescribing minimum number of years between submission of applications for same location and service
- Reevaluate the discount matrix and consider other alternatives to encourage self-policing amongst participants
- State-run networks should not be exempt from the RFP process and should not be subject to lesser competitive bid standards

**RFPs should specify that only common carriers may provide telecommunications services in the E-rate program**

- Mandated by 1996 Act, affirmed by FCC and SLD. However, SLD's "eligible telecommunications provider" designation is problematic
- Common carrier status must be determined by FCC (based initially on Form 499-A filing) and/or relevant PUC (state certification process)
- Service providers seeking to participate in the telecommunications services bucket must accept *all* of the responsibilities imposed on common carriers
- E-rate applications involving provision of telecommunications services by an entity that is not a common carrier are invalid

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**Price should be the single most important, but not the sole, factor in the award of the winning bid in the RFP process**

- The applicant should document as part of its RFP and/or bid selection process a clearly communicated set of measurable standards that will be used to select the winning bid
- Besides price, applicant may use other factors to evaluate a competitive bid, including (a) the service provider's technical and personnel qualifications (e.g., record for repair and maintenance services); (b) the service provider's character (e.g., its prior experience in the E-rate program, management capability and schedule compliance); (c) the service provider's financial viability (including ratings by the financial community); (d) compatibility with applicant's existing systems; and (e) environmental objectives
- If applicant relies upon a consultant's services, the consultant must be competitively neutral, not affiliated with any potential service provider

**Service providers should not be held responsible for recovery of all "Commitment Adjustment" funds**

- If the applicant is found guilty of waste, fraud, or abuse, the funds should be recovered directly from the applicant
- If the service provider is found guilty of waste, fraud, or abuse, the funds should be recovered directly from the service provider. Common carriers should not be held to stricter standards than are non-traditional service providers.
- If administrative error occurs on the part of the SLD, the funds should be recovered directly from the applicant since applicant was the party that benefited from the error

**Treatment of competitive bids involving multiple service providers when waste, fraud and abuse occurs on the part of one partner should vary depending upon when the waste, fraud and abuse is detected**

- Should the applicant develop substantial reason to suspect waste, fraud or abuse on the part of one of the proposed service providers after an application has been filed, but prior to receiving the funding letter: the applicant should be allowed to request a SPIN change to replace the potential "bad actor" with another service provider
- During the audit process, when service has already been provided: if waste, fraud or abuse by one service provider partner is identified after FDCL has been received and after service to applicant has

already been provided. E-rate funding should be provided to cover valid services provided by the "clean" service provider partners

**Steps must be taken to ensure competitive parity in the provision of WAN-based services**

- Some ISPs and other non-traditional providers (non-common carriers) are offering voice and data (telecommunications) services over Internet Access WANs. This practice should be forbidden, parties who have engaged in this practice should be disciplined, and any Internet Access E-rate funds which have been paid to fund telecommunications services should be recovered. Enforcement may be problematic and require more aggressive audit measures and enforcement resources.
- Remember that non-common carriers do not contribute to USF and other funds (USF alone is currently 9.1% of a common carrier's contributory revenues)

**Punishment should fit the crime: different violations warrant different disciplinary action**

- Serious violations merit serious punishment, lesser violations merit lesser punishment (5 levels as proposed by CoSN)
- Escalating levels of infractions may include (a) minor punishment for small errors – such as clerical or administrative errors, (b) moderate punishment for broader errors – such as infractions of USAC guidelines, and (c) more serious punishment for serious errors – such as violations of FCC rules or willful criminal intent